



Signed and Filed: June 25, 2010

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 09-30863 TEC
)	
DAVID SALMA,)	Chapter 7
)	
)	
Debtor.)	
)	
LEW JENKINS and LINDA JENKINS, as)	Adv. Proc. No. 09-3126 TC
Trustee of the Jenkins Trust U/A/D)	
1/15/98 and JACK H. FRESKOS,)	
beneficiary of IRA 042640 at)	
WESTAMERICA,)	
)	
Plaintiffs,)	
)	
vs.)	
)	Date: July 2, 2010
DAVID SALMA, RUBEN Q. PICARDO,)	Time: 9:30 a.m.
SEATTLE BLOCK, LLC, FATON BINAKU,)	Ctrm: 235 Pine St., 23rd Fl.
and MARION ZABORSKI, and DOES 1-10,)	San Francisco, CA
)	
Defendants.)	
)	

TENTATIVE RULING RE DEFENDANT DAVID SALMA'S
MOTION FOR SUMMARY JUDGMENT

The motion for summary judgment filed by David Salma
(hereinafter Defendant) should be granted.

Plaintiffs' claims require a finding that Defendant
intentionally misstated the amount of rent actually received.

Plaintiffs bear the burden of proof on this issue.

TENTATIVE RULING RE MTN.
FOR SUMM. JUDG.

1 Defendant's motion contests whether Plaintiffs have any
2 evidence showing that the rent roll allegedly provided by Defendant
3 falsely stated the rent that Defendant actually received in early
4 2006. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

5 It does not appear Plaintiffs have any such evidence.
6 Plaintiffs rely solely upon the Dunlap appraisal, which states in
7 relevant part that the residential units had a combined market
8 rental value of \$27,070 in March 2008. Property Sciences
9 represents in its March 2006 appraisal that Defendant provided a
10 rent roll showing combined actual rents of \$29,615. This evidence
11 is not sufficient to form the basis for a judgment against
12 Defendant. First, the Dunlap appraisal purports only to state
13 *market rental value not actual rents received*. Second, there is an
14 important disparity in time between Defendant's alleged
15 representation and the Dunlap appraisal. Real estate values
16 suffered an historic collapse between March 2006 and March 2008,
17 and Property Science states that the rent-roll amounts represented
18 market rent in March 2006. Third, the disparity between the rent
19 roll and Dunlap's estimated market value is small enough that it is
20 adequately explained by the difference in time. Fourth, Plaintiffs
21 have submitted no direct evidence that the rent roll was inflated -
22 no copies of leases, checks, testimony from tenants, or any other
23 evidence that tenants actually paid less than the amounts shown in
24 the rent roll.

25 ****END OF TENTATIVE RULING****